

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael G. Munsell on 29 December 2009.

The application has been amended as follows:

Please amend claims 1, 6, 8, 23, 25, 26, 36, 43, 45, and 61 as follows:

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1. (Currently amended) An alcohol breath testing device housing for a breath tester for use by an operator to test a subject, the housing comprising:

a base to be gripped by the operator and having a front edge and a back edge opposite said front edge;

a display disposed on the front edge of the base;

a mouthpiece interface receiving a removable mouthpiece, said mouthpiece interface being oriented with respect to said base such that when a mouthpiece is coupled thereto, the mouthpiece extends outward from said back edge, and said mouthpiece interface being oriented with respect to said base such that when the operator stands in front of the subject and the subject blows into the mouthpiece, said display is in the direct line of view of the operator and not in the direct line of view of the subject;

the mouthpiece interface comprising a generally U-shaped channel sized to receive the mouthpiece therein, the mouthpiece being configured to be pivotally coupled into the mouthpiece interface;

a manual sample button located on the back edge of said base opposite the display; and

an alcohol sensor fluidly connected to the mouthpiece interface, the alcohol sensor being adapted to detect alcohol present in the subject from a breath sample obtained by the subject blowing into the mouthpiece.

6. (Currently amended) An alcohol breath testing device housing in accordance with claim [[5]] 4 wherein said mouthpiece interface is further oriented such that when the mouthpiece is coupled thereto, the mouthpiece extends at least one of obliquely from said top surface and substantially parallel to said top surface.

8. (Currently amended) An alcohol breath testing device housing in accordance with claim 10 further comprising at least one actuator for controlling illumination of said interface.

23. (Currently amended) An alcohol breath tester housing assembly for a breath tester comprising:

a housing comprising a base, a display, and a mouthpiece interface, said base being adapted to be gripped by an operator during testing, said base having a front edge and a back edge opposite said front edge, the display disposed on the front

edge of the base, said display being disposed on said housing to be in line with an operator's direct line of view while gripping said base;

a mouthpiece configured to be removably coupled to said mouthpiece interface, said mouthpiece comprising an elongate body comprising at least one substantially planar surface, an open end, and a closed end, the closed end and substantially planar surface of the mouthpiece being placed against the mouthpiece interface in a testing position;

said mouthpiece interface being oriented with respect to said base such that when the mouthpiece is coupled thereto, the mouthpiece extends outward from said back edge, and

an alcohol sensor in fluid communication with the mouthpiece and the mouthpiece interface, the alcohol sensor being adapted to detect alcohol present in a subject from a breath sample obtained by the subject blowing into the mouthpiece.

25. (Currently amended) An alcohol breath tester housing assembly in accordance with claim 24 wherein said at least one actuator comprises a manual sample button located on ~~[[an]]~~ said back edge of said housing base that is opposite ~~[[an]]~~ the front edge where said display is located, such that when an operator stands with the subject and said display in the operator's direct field of view, the operator may at any time press said manual sample button without compromising the operator's grip on said base.

26. (Currently amended) An alcohol breath tester housing assembly in accordance with Claim 23 wherein said housing comprises ~~a front edge, a back edge, a~~ first sidewall, an opposite second sidewall coupled to the first sidewall at the front edge

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and the back edge, said display located on said front edge, said mouthpiece interface located on said top surface.

36. (Currently amended) An alcohol breath tester housing assembly for a breath tester comprising:

a housing comprising a base and a display, said base being configured to be gripped by an operator during testing, said base having a front edge and a back edge opposite said front edge, the display disposed on the front edge of the base, said display being oriented with respect to said housing to be in line with the operator's direct line of view while gripping said base and while the operator stands in front of a subject in a sideways stance;

a mouthpiece configured to be removably coupled to said housing and to extend obliquely from said housing, said mouthpiece being configured to be pivotally coupled to said housing;

said mouthpiece being oriented with respect to said base such that when the mouthpiece is coupled thereto, the mouthpiece extends outward from said back edge, and

an alcohol sensor in fluid communication with the mouthpiece, the alcohol sensor being adapted to detect alcohol present in the subject by the subject from a breath sample obtained by blowing into the mouthpiece.

43. (Currently amended) An alcohol breath tester housing assembly in accordance with claim 36 wherein said housing comprises at least one actuator for controlling operation of the breath tester, said at least one actuator being located on [[an]] the back edge of said housing base that is opposite [[an]] the front edge where

said display is located, such that when the operator stands with the subject and said display in the operator's direct field of view, the operator may at any time press said at least one actuator without compromising the operator's grip on said base.

45. (Currently amended) An alcohol breath tester housing assembly in accordance with claim [[37]] 36 wherein said mouthpiece has a selected cross-sectional shape, said selected cross-sectional shape being one of: a D-shaped cross-sectional shape and a V-shaped cross-sectional shape.

61. (Currently amended) An alcohol breath testing device comprising:

a base to be gripped by either hand of an operator and having a front edge and an opposite back edge;

a display disposed on the front edge and configured for alignment with the operator's direct line of view while gripping the base during use of the breath testing device;

a removable mouthpiece extending outward from the back edge and away from the display, the mouthpiece including at least one port for channeling air blown into the mouthpiece by a subject into the breath testing device and a discard breath outlet oriented such that discard breath is not directed at the operator of the breath testing device during testing when the operator views the display;

a mouthpiece interface for receiving the removable mouthpiece, said mouthpiece being configured to pivotally couple with the mouthpiece interface, the mouthpiece interface and mouthpiece being oriented with respect to the base such that, when the operator holds the base in either hand and stands in front of the subject, and

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the subject blows into the mouthpiece, the display is not in the direct line of view of the subject; and

an alcohol sensor in fluid communication with the mouthpiece and mouthpiece interface, the alcohol sensor being adapted to detect alcohol present in the subject from a breath sample obtained by the subject blowing into the mouthpiece.

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REASONS FOR ALLOWANCE

2. According to the Amendment, filed 26 October 2009, the status of the claims is as follows:

Claims 1, 4-6, 8-12, 23-29, 31-39, 41-46, and 61 are currently amended; and

Claims 2, 3, 7, 13-22, 30, 40, 47-60 are cancelled.

3. The Examiner and Applicant's Representative, Michael G. Munsell, agreed on the Examiner's Amendment above in order to place the Application in condition for allowance.

In the Interview Summary, attached the present Office Action, the Examiner stated that the independent claims 1, 23, 36, and 61 can still be interpreted as reading on the blood alcohol content testing devices shown as exhibits in the Interview Summary, filed 19 October 2009, depending on how the operator stands and positions his arms while holding the prior art device. Applicant provided a proposed amendment to further define the independent claims (and relevant dependent claims) in line with Applicant's arguments, i.e. the feature has a particular purpose and has a specific advantage to prior art devices, in the Remarks, filed 26 October 2009, and to distinguish the claimed structure from the prior art devices that were shown as exhibits in the Interview Summary, filed 19 October 2009. Examiner agreed that the proposed amendments, which further defines the position of the mouthpiece relative to the base, would overcome the prior art of record and the prior art exhibits. Examiner agreed to make the proposed amendments as an Examiner Amendment.

Additionally, the above Examiner's Amendment corrects minor errors in claims 6, 8, and 45.

4. Applicant's arguments, see Remarks, pp. 10-12, filed 26 October 2009, with respect to the rejection of claims 1, 4-6, 8-10, and 12 under 35 U.S.C. 103(a) as being Mault et al, U.S. Patent No. 6,468,222 B1 ("Mault"), in view of Sheehan et al, U.S. Patent No. 6,319,199 B1 ("Sheehan"), Raemer et al, U.S. Patent No. 4,233,842 A ("Raemer"), and Burroughs, U.S. Patent No. 3,880,591 A ("Burroughs"), have been fully considered, and are persuasive. The rejection of the claims has been withdrawn.

5. Applicant cancelled claims 13, 15, and 16, in the Amendment, filed 26 October 2009. Thus, the rejection of claim 13, 15, and 16 under 35 U.S.C. 103(a) as being unpatentable over Lutz et al, U.S. Patent No. 4,274,425 A ("Lutz") in view of Mault, is rendered moot.

6. Applicant's arguments, see Remarks, pp. 12-13, filed 26 October 2009, with respect to the rejection of claims 23, 24, 26-29, 31, 32, and 34 under 35 U.S.C. 103(a) as being Mault in view of Raemer, have been fully considered, and are persuasive. The rejection of the claims has been withdrawn.

7. Applicant's arguments, see Remarks, pp. 15-16, filed 26 October 2009, with respect to the rejection of claims 36-42, 44, 45, and 61 under 35 U.S.C. 103(a) as being Mault in view of Raemer and Brown et al, U.S. Patent No. 5,303,575 A ("Brown"), have been fully considered, and are persuasive. The rejection of the claims has been withdrawn.

8. The rejection of claim 25 under 35 U.S.C. 103(a) as being Mault in view of Raemer, as applied to claim 24 above, and further in view of Sheehan is withdrawn for the same reasons as Applicant's arguments to claim 4 as stated in the Remarks, pp. 12-13, filed 26 October 2009.

9. The rejection of claim 43 under 35 U.S.C. 103(a) as being Mault in view of Raemer and Brown, as applied to claim 37 above, and further in view of Sheehan is withdrawn for the same reasons as Applicant's arguments to claim 37 as stated in the Remarks, pp. 15-16, filed 26 October 2009.

10. The rejection of claim 33 under 35 U.S.C. 103(a) as being Mault in view of Raemer, as applied to claim 23 above, and further in view of Wolf is withdrawn for the same reasons as Applicant's arguments to claim 23 as stated in the Remarks, pp. 13-14, filed 26 October 2009.

11. The rejection of claim 35 under 35 U.S.C. 103(a) as being Mault in view of Raemer, as applied to claim 23 above, and further in view of Lutz is withdrawn for the same reasons as Applicant's arguments to claim 23 as stated in the Remarks, pp. 13-14, filed 26 October 2009. Applicant cancelled claim 49 in the Amendment, filed 26 October 2009. Thus, the rejection of claim 47 under 35 U.S.C. 103(a) as being unpatentable over Mault in view of Raemer, as applied to claim 47, and further in view of Lutz, is rendered moot.

12. The rejection of claim 46 under 35 U.S.C. 103(a) as being Mault in view of Raemer and Brown, as applied to claim 37 above, and further in view of Lutz is

withdrawn for the same reasons as Applicant's arguments to claim 37 as stated in the Remarks, pp. 15-16, filed 26 October 2009.

13. Applicant cancelled claims 54, 55, and 57-60 in the Amendment, filed 26 October 2009. Thus, the rejection of claims 54, 55, and 57-60 under 35 U.S.C. 103(a) as being unpatentable over Mault in view of Lutz, is rendered moot.

14. Claims 1, 4-6, 8-12, 23-29, 31-39, 41-46, and 61 are allowed.

15. The following is a statement of reasons for the indication of allowable subject matter:

Specifically, the prior art of record does not teach an alcohol breath testing device housing for a breath tester for use by an operator to test a subject, comprising: a mouthpiece interface receiving a removable mouthpiece and being oriented with respect to a base such that when the operator stands in front of the subject and the subject blows into the mouthpiece, the display is in the direct line of view of the operator and not in the direct line of view of the subject; and an alcohol sensor fluidly connected to the mouthpiece interface and being adapted to detect alcohol present in the subject from a breath sample obtained by the subject blowing into the mouthpiece.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/
Supervisory Patent Examiner
Art Unit 3735

/N. N./
Patent Examiner, Art Unit 3735
01/20/2010